ROBERT R. POWELL, SBN 159747
SARAH E. MARINHO, SBN 293690
POWELL & ASSOCIATES
925 W. Hedding Street
San Jose, CA 95126
T: (408) 553-0201
F: (408) 553-0203
E: admin@rrpassociates.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(San Jose Division)

LEOPOLDO MANZO, JR., Plaintiff, vs. COUNTY OF SANTA CLARA, INOCENTE CARRASCO, JR., ARTURO ROMERO, CORRECTIONAL DEPUTY ROMERO, DEAN DOWD, THEODORE SHELTON, and DOES 1-10, inclusive, Defendants.	Case No. COMPLAINT FOR VIOLATION OF CIVIL RIGHTS -JURY TRIAL DEMANDED

NATURE OF THE ACTION

1. Correctional officers employed by the County of Santa Clara regularly use excessive force on detainees in their custody. The County has failed to properly train, supervise and discipline correctional officers for such conduct, and as a result there is a culture within the jail of excessive use of force. The County also fails to provide proper medical care to individuals in their custody. Plaintiff Leopoldo Manzo, Jr. was medically neglected while in

the care of County of Santa Clara, and now seeks damages for this violation of his constitutional rights.

JURISDICTION

2. The claims alleged herein arise pursuant to 42 U.S.C. § 1983 and the Eighth and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. §794.

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

VENUE

4. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b) because the unlawful acts, practices and omissions giving rise to the claims brought by Plaintiff occurred in the County of Santa Clara, which is within this judicial district.

INTRADISTRICT ASSIGNMENT

5. Assignment to any division within this district may be proper pursuant to Civil L.R. 3-2(c) since this is a prisoner civil rights action. The events giving rise to this claim occurred in the County of Santa Clara. Plaintiff is no longer incarcerated.

PARTIES

6. Plaintiff LEOPOLDO MANZO, JR. (hereinafter "MANZO") was at all times herein mentioned, a detainee in the Santa Clara jails in the custody of Defendant Santa Clara County. He was arrested and booked into jail in December 2014 and entered pleas of not guilty at his arraignment. He later changed his plea on November 14, 2016, pursuant to a negotiated

disposition and was released within days of his December 2016 sentencing. By reason of his disabilities, MANZO has been excluded from programs and services at the jail.

7. Defendant COUNTY OF SANTA CLARA (hereinafter "COUNTY") is a municipal corporation duly organized under the laws of the State of California. Santa Clara County Department of Corrections ("DOC") is a subdivision of COUNTY, which operates three jail facilities: The Main Jail Facility, Elmwood Women's Correctional Complex, and the Elmwood Men's Correctional Complex. COUNTY is responsible for ensuring that jail policies and practices do not violate individuals' substantive and procedural due process rights.

8. At all times mentioned herein, Defendant INOCENTE CARRASCO (hereinafter "CARRASCO") was employed as a correctional officer for defendant COUNTY. Defendant CARRASCO is sued individually and as a correctional officer for the COUNTY. By engaging in the conduct described below, Defendant CARRASCO acted under the color of law and in the course and scope of his employment for Defendant COUNTY. By engaging in the conduct described here, Defendant CARRASCO exceeded the authority vested in him as a correctional officer under the United States Constitution and as an employee of the COUNTY.

9. At all times mentioned herein, Defendant ARTURO ROMERO was employed as a correctional deputy for defendant COUNTY. Defendant ARTURO ROMERO is sued individually and as a correctional deputy for the COUNTY. By engaging in the conduct described below, Defendant ARTURO ROMERO acted under the color of law and in the course and scope of his employment for Defendant COUNTY. By engaging in the conduct described here, Defendant ARTURO ROMERO exceeded the authority vested in him as a

correctional deputy under the United States Constitution and as an employee of the COUNTY.

10. At all times mentioned herein, Defendant CORRECTIONAL DEPUTY ROMERO (hereinafter "OTHER ROMERO") was employed as a correctional deputy for defendant COUNTY. Defendant OTHER ROMERO is sued individually and as a correctional deputy for the COUNTY. By engaging in the conduct described below, Defendant OTHER ROMERO acted under the color of law and in the course and scope of his employment for Defendant COUNTY. By engaging in the conduct described here, Defendant OTHER ROMERO exceeded the authority vested in him as a correctional deputy under the United States Constitution and as an employee of the COUNTY.

11. At all times mentioned herein, Defendant DEAN DOWD (hereinafter "DOWD") was employed as a correctional deputy for defendant COUNTY. Defendant DOWD is sued individually and as a correctional deputy for the COUNTY. By engaging in the conduct described below, Defendant DOWD acted under the color of law and in the course and scope of his employment for Defendant COUNTY. By engaging in the conduct described here, Defendant DOWD exceeded the authority vested in him as a correctional deputy under the United States Constitution and as an employee of the COUNTY.

12. At all times mentioned herein, Defendant THEODORE SHELTON (hereinafter "SHELTON") was employed as a correctional sergeant for defendant COUNTY. Defendant SHELTON is sued individually and as a correctional sergeant for the COUNTY. By engaging in the conduct described below, Defendant SHELTON acted under the color of law and in the course and scope of his employment for Defendant COUNTY. By engaging in the conduct described here, Defendant SHELTON exceeded the authority vested in him as a

correctional sergeant under the United States Constitution and as an employee of the COUNTY.

13. At all times mentioned herein, Defendant CORRECTIONAL DEPUTY DOE 1 (hereinafter "DOE 1") was employed as a correctional deputy for defendant COUNTY. Defendant DOE 1 is sued individually and as a correctional deputy for the COUNTY. By engaging in the conduct described below, Defendant DOE 1 acted under the color of law and in the course and scope of her employment for Defendant COUNTY. By engaging in the conduct described here, Defendant DOE 1 exceeded the authority vested in her as a correctional deputy under the United States Constitution and as an employee of the COUNTY.

14. At all times mentioned herein, Defendant CORRECTIONAL DEPUTY DOE 2 (hereinafter "DOE 2") was employed as a correctional deputy for defendant COUNTY. Defendant DOE 2 is sued individually and as a correctional deputy for the COUNTY. By engaging in the conduct described below, Defendant DOE 2 acted under the color of law and in the course and scope of his employment for Defendant COUNTY. By engaging in the conduct described here, Defendant DOE 2 exceeded the authority vested in him as a correctional deputy under the United States Constitution and as an employee of the COUNTY.

15. At all times mentioned herein, Defendant CORRECTIONAL DEPUTY DOE 3 (hereinafter "DOE 3") was employed as a correctional deputy for defendant COUNTY. Defendant DOE 3 is sued individually and as a correctional deputy for the COUNTY. By engaging in the conduct described below, Defendant DOE 3 acted under the color of law and in the course and scope of his employment for Defendant COUNTY. By engaging in the conduct described here,

conduct described here, Defendant DOE 3 exceeded the authority vested in him as a correctional deputy under the United States Constitution and as an employee of the COUNTY.

FACTUAL ALLEGATIONS

Background Facts: The Year Before MANZO Comes into County Custody, He is a Victim of Gun Violence, in a Coma for Two Weeks and then Confined to a Wheelchair for the Rest of the Year.

16. On May 31, 2013, MANZO was a victim of gun violence. MANZO drove up to a store in San Jose and as he got out of his work truck, he was approached by a juvenile who then shot him five times in broad daylight. Residents of the apartment building across the street heard the gunfire and called 911.

17. MANZO was in a coma for two weeks and hospitalized for two months at Regional Medical Center. He had emergency surgery to repair the damage to his torso and remove three of the bullets, but two bullets remain in his body to this day. Doctors advised that it was better to leave one of the bullets in MANZO's torso because removing it may lead to more nerve damage. Another bullet hit MANZO's spine and broke off a piece of bone, causing permanent nerve damage that is not expected to improve.

18. After waking up from the coma he reported to doctors at Regional that his feet hurt. MANZO's left big toe has nerve damage and causes him pain to this day, requiring special footwear.

19. MANZO remained paralyzed from the chest down for two months. Once he was able, he began physical therapy twice a day. He was discharged from the hospital in July 2013. Around this time, a ventral hernia began to develop at the site of the surgical incision on his torso. A ventral hernia is a bulge of tissues through an opening, or defect, within the

abdominal wall muscles. The hernia continued to enlarge to the point of becoming the size of a bowling ball.

20. MANZO was confined to a wheelchair until December 2013, at which point he started using a walker. He relied on the walker for about six months and then he began using a cane.

21. Following the shooting, MANZO suffered from depression due to his new physical disabilities and overall unfortunate medical situation. He had to deal with the fact that he lost a kidney and five foot portion of his intestine, and suffered a spinal injury that required him to take strong medications for his nerve pain. He was also due to have further surgery to remove a temporary inferior vena cava ("IVC") filter from his body, and also to repair the huge hernia.

22. MANZO's situation had also exacerbated his underlying psychiatric condition of bipolar disorder. He began to self-medicate and on or about December 8, 2014, he was arrested for DUI in Stanislaus County. He was sent to the local hospital to be medically cleared for jail. He spent a couple of days in the jail medical ward then was released on his own recognizance around December 12, 2014. MANZO came home to San Jose that same day and got into a dispute with family members and was arrested on the night of the 12th. MANZO went to Santa Clara County jail for day or two then was released. MANZO went to Valley Medical Center ("VMC") the day he was released from County custody and told staff that he did not feel well physically. While at VMC in Milpitas, he was re-arrested on what he is informed and believes was a District Attorney warrant and brought back into County custody, just ten hours after he had been released.

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MANZO, Suffering from PTSD, a Mobility Disability, Nerve Pain and a Ventral Hernia the Size of a Bowling Ball, is Medically Neglected and Denied Reasonable Accommodations by the County While in Main Jail.

23. MANZO was booked into the Santa Clara County Main Jail on December 18, 2014. MANZO had received regular medical treatment and was covered by medical insurance prior to coming into County custody.

24. During the intake process, MANZO informed jail staff that he was physically disabled and recovering from severe injuries due to being shot five times. He reported that he still had two bullets lodged in his body, he lost a kidney and five foot portion of his intestine, has a spinal injury and deep vein thrombosis. He advised staff of his current medications, including Neurontin (Gabapentin) - a membrane stabilizing medication for his nerve pain; Flexeril - an antispasmodic; Naproxen - a nonsteroidal anti-inflammatory; Norco - a narcotic analgesic; and Zostrix topical cream. He also notified County that he was due to have further surgery to remove a temporary inferior vena cava ("IVC") filter from his body, and also to repair the huge abdominal hernia.

25. He reported and showed his bowling ball sized ventral hernia to jail staff and was housed in a medical unit.

26. Up until his incarceration, MANZO was covered by medical insurance and saw many medical providers regarding his physical condition and his psychiatric diagnoses.

27. Once in the custody of the County, MANZO received medically neglectful treatment, and the County was deliberately indifferent with its maltreatment of his medical conditions.

28. On the same day he was booked, December 18, 2014, MANZO submitted a written request, commonly referred to in the jail as a "white card," to jail health services, letting them know that he was feeling sick physically and mentally. He requested reasonable

accommodations from the County, such as a cane, extra mattress, and physical therapy. He also requested a blanket and complained to staff in the medical unit that it was freezing cold, which exacerbated the nerve pain he had due to his spinal injury from his recent gunshot wounds. County denied his requests for accommodation and told him that he would have a mental health appointment on December 30, 2014.

29. On December 20, 2014, MANZO wrote a white card, informing the jail health services that he needed reasonable accommodation for his physical disability in the form of proper footwear. He also indicated that he was in pain.

30. On Christmas, December 25, 2014, MANZO again requested in writing that he be issued an extra blanket or thermal shirt due to the cold temperatures in the medical unit, and told County that he was catching a cold, an ailment which would cause coughing and could cause pain and complications related to his huge abdominal hernia. Two days later a nurse responded writing: “Message sent to MD, he will decide if you need thermal.”

31. On January 1, 2015, MANZO wrote a white card to jail medical pleading with them for his nerve pain medication, Neurontin, which he still had not received since being booked into County custody.

32. On January 4, 2015, MANZO again notified the County in writing that he was in pain and pleaded for his medications. County responded by informing him that he has a medical appointment scheduled three and a half weeks later, on January 28, 2016. On or about this same day, MANZO was also kicked out of the medical housing unit for covering up the air vent in his cell which was blowing cold air at him throughout the day, which he had grieved before and received no accommodation from County. He was re-housed to pod 216 in main jail south, which is a dorm-style housing unit where up to 29 men live and share two toilets

and urinals. Due to MANZO's injuries, he finds it difficult to urinate while standing up at a urinal, so he would have to wait for a toilet to be free so that he could sit down to urinate.

33. On January 7, 2015, MANZO notified the County by submitting a white card that he had bloody stool and was scared. He reminded County that he was supposed to have surgery.

34. On January 9, 2015, MANZO again pleaded in writing that jail medical assess his pain medications and indicated that he was in "excruciating pain." County responded by informing him that he has a medical appointment scheduled for three weeks later, on January 28, 2016, and to please discuss it with the doctor then.

35. On January 14, 2015, MANZO requested to see a doctor about his severe pain, for which he had not received his proper medication for now one month. County responded by calling his plea for pain medicine a "duplicate" request and telling him to discuss his concern with doctor at his next appointment on January 28, 2015.

36. On January 15, 2015, MANZO appeared in Santa Clara County Superior Court, Department 46, for his arraignment while he was in the custody of Department of Corrections.

37. On January 16, 2015, MANZO made a written request to be notified of what medications he was receiving.

38. On January 20, 2015, MANZO appeared in Santa Clara County Superior Court, Department 45, and Hon. Sunil Kulkarni ordered the jail to have MANZO seen by medical staff. That same day when he was returned to the main jail, MANZO submitted a written request to jail medical, notifying them of the court's order for medical attention, and requesting to see a doctor accordingly. The next day he submitted another written request for the same. On January 23, 2015, he again submitted a written request to jail medical, advising them of the court ordered medical visit. On January 24, 2015, MANZO again submitted a

white card pleading with jail staff for his proper medication and for a doctor's visit. He also requested his heartburn medication which he needs ever since he lost some of his intestine from the gunshot wound.

39. On February 27, 2015, MANZO informed County in writing that the dosage of his prescribed Gabapentin for his nerve damage, along with the pain medication was not effective in easing his suffering and he was still in pain. MANZO was not seen by a doctor in response to this plea until March 6, 2015.

40. Sometime in early 2015 MANZO's housing unit at the main jail flooded. One toilet was constantly out-of-order, leaving only one toilet for 29 men. Correctional deputies gave the detainees a toilet brush – not a plunger – to try to unclog the toilet. They managed to unclog the toilet, but sewer water flooded everywhere, creating a hazardous environment. In order for the inmates to use the toilet, they had to wade through deep pools of standing water. MANZO developed a toenail fungus due to this unsanitary condition, but the jail medical staff refused to prescribe medication.

41. During his time housed in pod 216 in 2nd West portion of main jail south, MANZO's mobility disability was not reasonably accommodated by County. MANZO would get access to out-of-cell time in the outside area called the "yard." The "yard" is a concrete area with approximately eight separate fenced in kennel-type cages where detainees "get" to walk around in the fresh air. Detainees mill around in circles in the cages, or do pushups or any physical workout they are inclined to do. Detainees in local detention facilities such as Santa Clara County jail are required to get this out-of-cell time as required under the minimum standards of Title 15 of California Code of Regulations.

42. The largest of the cages had a bench in it and MANZO would request to use that cage so that he could take a break from standing if need be, because it is too difficult for him to lower himself to the ground to sit, let alone get back up. The correctional officers would often deny him this reasonable accommodation, including one Deputy DEAN DOWD, who responded to MANZO's request by callously telling him to "sit on the ground." To make matters worse, the cage with a bench stayed empty for the entire hour that MANZO was in the yard in the cage with no bench. MANZO complained to a sergeant about this incident, to no avail.

43. On March 3, 2015, MANZO was on calendar to appear in Santa Clara County Superior Court, Department 45, but was not transported to the courtroom by Correctional Deputies. The hearing proceeded in MANZO's absence and Hon. Charles Wilson ordered the jail to have MANZO seen by medical staff.

44. On April 20, 2015, MANZO appeared in Santa Clara County Superior Court, Department 45, and Hon. Charles Wilson ordered the jail to have MANZO seen by medical staff.

45. On June 15, 2015, MANZO was a victim of excessive use of force by correctional deputies (explained in paragraphs 85-88 below). MANZO was visually examined by a jail nurse named Kelly but MANZO's request to see a doctor was denied. Nurse Kelly scheduled a doctor's appointment for a future date but did not inform MANZO of when it was. The day after the incident, MANZO filed a written request to see a doctor because he was in pain due to the tears to his hernia from the recent use of force. On June 30, 2015, more than two weeks after the injuries, MANZO still had not been seen by a doctor, so he submitted another written request.

46. On July 10, 2015, MANZO appeared in Santa Clara County Superior Court, Department 45, and Hon. Charles Wilson ordered the jail to have MANZO seen immediately by medical staff for an examination.

47. On September 2, 2015, MANZO submitted a written request that the jail increase his nerve pain medication pursuant to his doctor at Valley Medical Center who prescribed an increase due to MANZO's continued pain and discomfort to due nerve spasms. The doctor MANZO was seen by at VMC is the head of the neurology department. MANZO also requested orthopedic footwear, per the VMC doctor's recommendation after MANZO's ankles and feet were swelling from nerve damage and improper jail-issued footwear. MANZO did not receive a response from jail medical staff regarding his request of September 2, 2015, until October 5, 2015, at which point the response said that he had a future medical appointment but it did not say when that appointment was.

48. At the end of October 2015, MANZO was unable to attend a mental health appointment because he was ill. The following day at "pill call" (the common term around the jail for the various times per day that medications are distributed to detainees), MANZO was not given his usual Zoloft for depression and Melatonin sleep aid. He was given no notice or explanation for this termination, and his dosages were not tapered off or otherwise medically supervised.

49. MANZO soon experienced physical and mental symptoms of serious side effects of abrupt stoppage of antidepressants. MANZO submitted a written request on November 2, 2015, to be put back on his medications immediately and told the jail that he felt like his body went into shock, he got sick, he could not sleep and he felt depressed.

50. On November 4, 2015, a deputy responded in writing to MANZO's written request to get back on his antidepressants saying only: "You can fill out a 'white card' and request a new appointment."

51. On February 8, 2016, MANZO appeared in Department 45 and Hon. Charles Wilson ordered the jail to have MANZO seen by medical staff. At this point, a Superior Court had to order medical assistance or evaluation at least five different times during MANZO's 13 months in custody.

52. On April 19, 2016, MANZO had surgery at Stanford Hospital to remove the IVC filter that was previously implanted during his emergency surgery after he was shot. MANZO was informed that he still needed further surgery to repair his ventral hernia, but that he had gained so much weight in jail that he was not currently a candidate and would need to exercise to lose weight before having the necessary surgery.

53. Sometime around early April of 2016 MANZO fell and hurt his wrist and knee. County had denied him use of a cane, which he needed to walk safely, and he fell hard. On April 21, 2016, his wrist still hurt so he submitted a white card requesting to be examined by medical staff.

54. On May 2, 2016, MANZO submitted a written inquiry to jail medical asking if it was safe for him to take Prilosec since he only has one kidney and he recently heard that heartburn drugs were tied to higher risk of kidney disease. County responded by telling him not to take the Prilosec if he has concerns and that at his next appointment, June 24, 2016, he could ask the doctor to prescribe an alternative if needed.

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55. On May 26, 2016, MANZO wrote a white card to jail medical again, informing them that his knee still bothered him. County responded by scheduling him an appointment for July 13, 2016, and said he could request a knee brace at his appointment.

56. Around June 22, 2016, County abruptly discontinued MANZO's Zoloft and melatonin pills. He had been taking 50mg daily dose of Zoloft up until County, with no notice, explanation, tapering off or medical supervision discontinued his antidepressants.

57. On July 6, 2016, MANZO wrote a white card asking about the discontinuation and advising jail medical that he was feeling very ill.

58. On July 14, 2016, MANZO submitted a written grievance since his written requests to medical had gone unanswered. Sgt. Jennifer Bice referred this grievance to jail medical staff. County failed to respond until July 18, 2016, when MANZO finally had an appointment.

59. On July 13, 2016, medical staff approved MANZO's request for proper footwear, writing on the medical authorization form: "please allow closed deck shoes for three months as per MD's orders." This medical recommendation was denied by Sergeant THEODORE SHELTON (Badge 10404) who received the medical form, on which he or she wrote that MANZO could not have the recommended shoes. No reason was given for SHELTON's refusal to go along with the medical recommendation. On August 24, 2016, medical staff again recommended the shoes and this time SHELTON gave the reason for his denial as "security reasons/ shoes not specified/ ankle brace possible?"

60. On July 14, 2016, MANZO again requested a cane, an accommodation which he had now been denied for over one year, but had pleaded for in writing many times. Finally, on July 15, 2016, he was allowed to check out a cane for when he is outside of his pod or

walking a long distance. MANZO was required to request that a correctional deputy check out the cane to him when he wants to get activity during his limited out-of-cell time.

61. Once MANZO began to try to check out his cane from the deputy, he realized that it was not going to be without bullying. The deputies often got annoyed or worse, harassed MANZO when he requested use of the cane, and punished MANZO with reduced privileges or other inconveniences, causing him to be reluctant to check it out and therefore not get as needed exercise.

62. On July 26, 2016, MANZO renewed his request for proper footwear, an accommodation he had originally requested within days of being booked into jail in 2014. He notified County in writing that his toe was deformed from nerve damage due to the gunshot wounds and hurt in the jail-issued sandals. He submitted another white card regarding this request for accommodation on October 12, 2016, requesting medical attention for his swollen foot and ankle, and renewing his previous requests for proper footwear.

63. On July 31, 2016, MANZO submitted a white card to jail medical informing them that they recently discontinued his Lidocaine patch and instead issued him cream, which was not as effective.

64. On August 18, 2016, MANZO appeared in Department 45 and Hon. Charles Wilson ordered the jail to provide MANZO with a medical evaluation.

65. On August 29, 2016, MANZO submitted a written request for an accommodation relating to his ventral hernia, which requires an abdominal support belt sometimes called a binder. He notified the County that the binder provided by jail medical digs into his side and causes more pain than it is worth, and prevents him from wearing it for extended periods of

time. Days later, County responded that he has a medical appointment on October 5, 2016, at which time he should discuss this issue with the doctor.

66. On September 8, 2016, MANZO again appealed in writing to jail medical to treat his toenail fungus which he had first reported in early 2015 when his housing unit flooded and the inmates were forced to walk through standing water to use the toilet. He wrote that he now suffered an ingrown toenail with an open wound and puss, along with the ongoing fungus. He followed up with this same issue on September 21, 2016 and again on October 6, 2016.

67. On September 14, 2016, MANZO pleaded with jail medical staff to reassess his nerve pain medication, Neurontin, since he remained in pain and was suffering nerve spasms. County responded by telling him to discuss it with the doctor at his appointment scheduled for October 5, 2016. A week later he followed up again because he was in such pain and on September 20, 2016, he was administered Tylenol and told that he had an appointment "coming up."

68. On September 23, 2016, MANZO was taken to see a foot doctor at VMC, who told him that his left toe is deformed due to nerve damage and that surgery was an option. The doctor told MANZO that the jail issued shoes and inserts were not appropriate and were causing additional pain. The doctor then prescribed proper inserts and shoes for MANZO's situation.

69. During this time, MANZO would also verbally grieve to corrections staff at every opportunity. On many occasions, he would tell Sgt. Graham that his improper footwear caused him pain and that he needed an ADA accommodation. Other detainees witnessed MANZO's attempts to get accommodation for his disability.

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70. On September 26, 2016, MANZO was not given his afternoon Naproxen pill to reduce pain and inflammation. Since this was not the first time the jail had failed to provide him his vital medications, MANZO began documenting these issues.

71. On October 5, 2016, MANZO had a doctor's appointment at the jail. The doctor told him that he would not increase his pain medications until after he got proper footwear and his toenail heals. MANZO explained to the doctor that he had been complaining of foot pain since he came into custody two years prior. MANZO further pointed out that it made it nearly impossible for him to get activity or even be mobile since he is always in pain and denied proper footwear. The doctor recommended that MANZO try doing crunches. MANZO reminded him that his stomach muscles were weak to the huge hernia. The doctor also told MANZO that he did not need his cane around the dorm.

72. On October 11, 2016, MANZO was not given his morning Gabapentin for his nerve damage and spasms. The nurse told MANZO that they were out of the medication and would have to order it.

73. On October 13, 2016, MANZO was not given his morning Naproxen pill because the nurse told MANZO that they were out of that pill and they need to order it. MANZO had court that morning and had to make the painful walk down the long tunnel in his uncomfortable jail-issued sandals while his feet and ankles were swollen. MANZO appeared in Department 45 and Hon. Charles Wilson ordered the jail to have MANZO seen by medical staff; now the seventh time such orders were made.

74. On October 21, 2016, MANZO did not receive his afternoon Naproxen pill. He complained to the nurse that he needed it and was in pain, but she said she only had his Gabapentin pill. Later that day, MANZO was moved to housing unit 4B which does not

allow for group programming and therefore further isolates detainees. He was also denied a double mattress as he had been accommodated with in his previous housing unit.

75. On October 24, 2016, MANZO again was not given his afternoon Naproxen pill and had to suffer needless pain and inflammation.

MANZO is Harassed and is the Subject of Excessive Use of Force by CARRASCO and his Colleagues at the Main Jail and Hall of Justice, Causing Him to Miss Court Dates.

76. In the weeks before his December 2014 arrest, MANZO had been having a mental health crisis. The situation resulted in disputes with family members desperate to help him, as well as with his ex-girlfriend who sought and obtained a restraining order against him. MANZO is informed and believes that the restraining order also listed her brother, INOCENTE CARRASCO, as a protected party. CARRASCO was at that time and remains today, a correctional deputy at Santa Clara County jail.

77. On March 3, 2015, MANZO was in a holding cell at the main jail, waiting to be transported to his court date. MANZO had paperwork with him related to the restraining order with CARRASCO and his sister. MANZO brought the paperwork to show to his attorney, because he had told her that he had been seeing CARRASCO around the jail and was concerned.

78. On this morning, CARRASCO was working as a transportation deputy assigned to get detainees to and from court. CARRASCO overheard MANZO telling another detainee in the holding tank about the restraining order. CARRASCO told MANZO that his court date was cancelled and to “go back.”

79. The minute order from MANZO’s missed court date on March 3, 2015, states that he was not present in court for his hearing because he was not transported from the jail. His hearing was continued to another date without notice or an opportunity to be heard.

80. MANZO walked back toward his housing unit and encountered ARTURO ROMERO, a transportation deputy, along with DOE 1, a female transportation deputy, in front of the elevators in the basement of main jail south. OTHER ROMERO, a correctional deputy whose first name is unknown but is of bigger stature than his colleague ARTURO ROMERO, was working at the desk in the control booth near the elevators.

81. MANZO asked the three deputies if he could use the elevator to get back to his housing unit and advised them that he is disabled. OTHER ROMERO replied, “No, fuck that, use the stairs.” MANZO persisted but the three deputies repeatedly refused to accommodate him, insisting that he take the stairs. MANZO was distressed at the treatment by the deputies, but he had no choice but to try to take the stairs.

82. MANZO walked to stairwell which was behind a heavy gate of bars. He opened the door and let the door slam behind him. This angered the deputies and ARTURO ROMERO and DOE 1 immediately opened the gate, grabbed MANZO, handcuffed him and took him to a holding cell. ARTURO ROMERO grabbed MANZO and twisted his wrists and arms. MANZO pleaded with ARTURO ROMERO to stop and again reminded him that he is disabled. ARTURO ROMERO said, “Quit putting CARRASCO’S business out there.” MANZO responded, “He’s putting his business out there.” DOE 1 witnessed this excessive use of force and the comment by ARTURO ROMERO.

83. OTHER ROMERO made MANZO wait alone in the holding cell for an hour or two while occasionally making harassing comments to him, including something to the effect of “Now you have your tail between your legs.”

84. In March 2015, MANZO missed court again because of defendants. As he was walking and about to cross the metal detector to go to the courthouse from the jail tunnel, he

encountered DOE 1. DOE 1 said to MANZO, “Do you know which courtroom you’re going to?” MANZO said, “No… doesn’t it say which courtroom I’m supposed to go to on that paper that you’re holding?” DOE 1 took offense and responded, “Quit acting like a dick.” After a pause she added, “You know what? Just go back.”

85. MANZO walked back toward his housing unit and passed ARTURO ROMERO in the tunnel. MANZO commented, “You guys have control issues!” OTHER ROMERO, who was again working the control booth near the elevators in the basement of main jail south, came charging toward MANZO from the control booth. MANZO pleaded with the deputies, reminding them that he is disabled. OTHER ROMERO said, “Watch out you’re gonna catch a hot one.”

86. MANZO was placed in a holding cell and the deputies left him alone there for a while. OTHER ROMERO came back later with DOE 2, a correctional deputy wearing a bullet proof vest, and pulled MANZO out of the holding cell. DOE 2 stood to the side.

87. OTHER ROMERO grabbed MANZO and escorted him by the arm out of the holding cell where he had been sitting, and brought him toward the larger holding cell next door, which is called the pink room due to the color of the painted walls. OTHER ROMERO forcefully pushed MANZO into the pink room, causing MANZO’s left shoulder to ram into the door frame and later bruise.

88. OTHER ROMERO wanted to fight. He was removing MANZO’s restraints while pushing him from behind against the wall. OTHER ROMERO said as he removed MANZO’s handcuffs: “We’re going to get down one on one. Watch, you’re going to catch a hot one to your head.” But MANZO did not let OTHER ROMERO goad him into a fight, and OTHER ROMERO finally relented.

89. MANZO reported the incident to Internal Affairs. MANZO also showed the large bruise on his left shoulder to a psychiatrist during a visit within days of the use of force by OTHER ROMERO. Internal Affairs came to speak to MANZO about a month later and interviewed him.

90. On June 12, 2015, MANZO was in the basement of Main Jail in a holding cell awaiting transportation to court when CARRASCO walked up to the door and threatened MANZO. MANZO previously dated CARRASCO's sister and their relationship ended badly. CARRASCO taunted MANZO in the holding cell, saying in front of other inmates: "I know where you live," and "I'll kick your crippled ass."

91. Another inmate named Gabriel, who had been sitting in the holding cell while CARRASCO made these threats to MANZO, reported to MANZO at that time: "CARRASCO was asking me about you last week – he asked me: 'Hey is that j-cat up there with you?'" Gabriel told MANZO that he did not know who CARRASCO was referring to at the time, but had now just put two and two together after the words were exchanged in the holding cell.

92. "J-cat" is a jail-house slur for people with mental health issues.

93. At his first opportunity, MANZO told his public defender, Gilda Valeros, what CARRASCO had done and about his history with CARRASCO's sister. He reported feeling intimidated because when CARRASCO and MANZO's paths would cross in the jail, CARRASCO would always make his presence known. Ms. Valeros advised MANZO to avoid CARRASCO as best he could.

94. The following Monday, June 15, 2015, MANZO was again awaiting court in a holding cell with other inmates when CARRASCO walked up to the holding cell and told MANZO:

"Come here." MANZO, who was seated on a bench fully shackled and waist chained, replied "No, my lawyer told me to stay away from you." MANZO mentioned the restraining order CARRASCO's sister had obtained against MANZO around December 2014. Another correctional deputy, DOE 3, said, "Get him!" and CARRASCO came in and yanked MANZO up by the arm.

95. CARRASCO pulled MANZO out of the holding cell. CARRASCO and DOE 3 were on either side of MANZO, each holding one of his arms as they forced MANZO against the wall face first and twisted his arms such that he was lifted up on his tip toes. MANZO was in pain due to the nerve damage in his feet and the fact that his stomach muscles are not strong enough to support him to stand on the tips of his toes. The deputies were shouting: "Stop resisting!" MANZO, who was not resisting, pleaded for them to stop, saying: "Please stop, I'm handicapped!" CARRASCO responded, "Shut up, you walk fine."

96. The deputies took MANZO up the elevator to his housing unit on the 7th floor where he was housed in a single cell in 7A. They ordered MANZO to lie face down on his cell bunk to remove his restraints. MANZO's thin mattress was previously rolled up and placed to the side, so the deputies were ordering that he lay face first on just the metal rack. He did not want to lie on the hard metal bunk on top of his huge abdominal hernia. Additionally, he told the deputies that he did not have strong enough stomach muscles to get himself down face first without supporting himself with his hands, which were still shackled to his waist chains. Despite his pleas, he was forced to free fall down to the bunk roughly, causing him to land on top of his hernia which resulted in pain and visible tears on his hernia. The correctional deputies then sat on top of him and took his handcuffs off.

97. MANZO is informed and believes that a sergeant arrived and filmed the encounter with a department-issued video camera. MANZO is further informed and believes that an Internal Affairs investigation was done into the incident, but not until a month after he grieved it and by then the bruising had gone down. MANZO complained in person to Sergeant Michael Pennington, and also submitted a written grievance.

98. MANZO was re-housed to a more restrictive housing environment as a result of the incident.

99. On July 17, 2015, CARRASCO, sought and obtained a criminal protective order (CPO) under penal code § 136.2 against MANZO. The CPO, ordering that MANZO have no contact with CARRASCO, was ordered to expire on July 17, 2016. The same day, MANZO was arraigned on a charge of felony stalking in violation of Penal Code § 646.9(b) based on CARRASCO's allegations.

100. On October 1, 2015, MANZO appeared in Department 45 for his preliminary hearing on the stalking case involving CARRASCO. On a motion by the District Attorney's office, the case was dismissed and the court ordered the CPO be terminated.

101. County failed to protect MANZO from CARRASCO, even after County was on notice that CARRASCO had sought a CPO against MANZO, and that MANZO had alleged that CARRASCO had used excessive force and was harassing him.

102. In the months following the incidents with CARRASCO, MANZO submitted numerous written grievances asking the County to investigate the excessive use of force and harassment.

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MANZO Continued to be Subjected to Cruel and Unusual Conditions of Confinement.

103. MANZO was isolated in a tiny cell for 23 to 24 hours of every day, without receiving out-of-cell time that he is entitled to under state law.

104. MANZO was effectively denied access to the minimum three hours per week of exercise to which he is entitled under Title 15 § 1065.

105. MANZO was regularly forced to sit idle locked in his small cell for 47 hours at a time. This isolation is inhumane, especially for people like MANZO who suffer from preexisting mental health conditions and are likely to experience serious psychological and physiological harm as a result of these COUNTY practices. MANZO has provided the COUNTY with notice by filing administrative grievances regarding his unconstitutional lack of out-of-cell time and the COUNTY is deliberately indifferent to the serious risk of harm caused by these conditions.

106. MANZO also at various times had weeks and months long delays in receiving his medications.

107. This denial of environmental stimulation and basic necessities of life is unacceptable in a civilized society for any inmate, but it is notable that during 23 months of this time MANZO was a pretrial detainee who was not serving a sentence and was presumed innocent.

DAMAGES

108. As a proximate result of Defendants' conduct, MANZO suffered severe pain and physical injuries. As a further proximate result of Defendants' conduct, MANZO suffered severe emotional and mental distress, fear, terror, anxiety, depression, humiliation, embarrassment, and loss of his sense of security, dignity, and pride.

109. As a further proximate result of defendants' conduct, MANZO has incurred medical expenses, and will continue to incur medical expenses in the future in an amount according to proof. MANZO will also lose future income in an amount according to proof.

110. The conduct of the individual Defendants was malicious, sadistic, wanton, and oppressive. MANZO is therefore entitled to award of punitive damages against the Defendants.

CLAIMS FOR RELIEF

First Cause of Action
(Fourteenth Amendment – Cruel and Unusual Punishment, 42 U.S.C § 1983)
(Against Defendants CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOWD, SHELTON, DOE 1, DOE 2, and DOE 3)

111. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

112. In doing the acts complained of herein, Defendants CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOWD, SHELTON, DOE 1, DOE 2 and DOE 3, acted under the color of the law to violate MANZO's basic human dignity and his right to be free from cruel and unusual conditions under the Fourteenth Amendment to the United States Constitution, including the right to be free from the use of excessive force by correctional deputies and other government actors.

113. As a proximate result of defendants' malicious and sadistic conduct, MANZO suffered injuries and damages as set forth in paragraphs 99-100. The punitive damage allegations of paragraph 101 apply in this Claim for Relief to all individually-named Defendants.

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Second Cause of Action
(Eighth Amendment and Fourteenth Amendment – Cruel and Unusual Punishment, 42 U.S.C. §1983 - *Monell* Liability)
(MANZO Against Defendant COUNTY)

114. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

115. From the time MANZO was booked into County jail in December 2014 until he was sentenced on November 14, 2016, he was a pretrial detainee whose conditions of confinement amounted to punishment in violation of the Due Process Clause of the Fourteenth Amendment. Following his sentencing and until his release in December 2016, his conditions of confinement were cruel and unusual under the Eighth Amendment.

116. The COUNTY, by and through its supervisory officials and employees, has been given notice on repeated occasions prior to the excessive force used on MANZO, of a pattern of ongoing constitutional violations and practices by the individually-named Defendants herein and other correctional deputies employed at the COUNTY Main Jail and other jails in the COUNTY jail system, including having received notice regarding the use of excessive force, and cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution.

117. These policies and practices have been and continue to be implemented by Defendants, such as the harassment and excessive use of force suffered by MANZO at the hands of CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOWD, SHELTON, DOE 1, DOE 2 and DOE 3, are the proximate cause of the Plaintiff's ongoing deprivation of rights secured under the Eighth Amendment. The force used by CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOE 1, DOE 2 and DOE 3 was not a good faith effort to maintain or

restore order, but was applied maliciously and sadistically for the very purpose of causing harm.

118. COUNTY, by its policy and practice of isolating people in inhumane conditions referenced above, is subjecting individuals, including Plaintiff, to serious psychological and physiological harm. Jail officials have consistently denied or ignored Plaintiff's and others written requests to be removed from isolation or to have access to at least the minimum out of cell time guaranteed by law. This amounts to a serious deprivation of the minimal civilized measures of life's necessities.

119. Despite said notice, Defendant COUNTY has demonstrated deliberate indifference to this pattern and practice of constitutional violations, having shown deliberate indifference, by failing to take necessary, appropriate, and/or adequate measures to prevent the continued perpetuation of said pattern of conduct by their employees and agents. This lack of an adequate supervisorial response by Defendant COUNTY demonstrates the existence of an informal custom, policy, or practice, which tolerates and promotes the continued violation of civil rights of inmates by COUNTY's employees and agents.

120. MANZO is informed and believes that in addition to these long standing practices and customs, the COUNTY has failed to provide adequate training, or no training at all, on the obligations of COUNTY correctional deputies to not engage in excessive force, and to conduct themselves as professionals charged with not only ensuring the completion of an inmate's criminal sentence, but the safety of inmates as well.

121. The acts of the individually-identified Defendants alleged herein are the direct and proximate result of the deliberate indifference of Defendant COUNTY and its supervisory

officials and employees to violations of the constitutional rights of inmates by the individually-named Defendants and other correctional deputies.

122. The COUNTY has failed to adequately seek out or stop such sadistic behavior as alleged herein by failing to investigate claims of excessive force, and further failing to adequately discipline, punish, or expel correctional deputies who have engaged in the aforementioned and/or similar conduct when handling inmates.

123. The COUNTY has either provided no training at all in regards to appropriate handling, treatment, and protection of inmates, or has received wholly inadequate training with no measurable standards, or no measuring, of the training recipients understanding, retention, and application – or non-application – of training materials and subject matter.

124. MANZO's injuries were a foreseeable and a proximate result of the deliberate indifference of the COUNTY to the constitutional violations taking place in the COUNTY Main Jail and jail system, existing as a result of the patterns, practices, customs and/or policies, and/or lack of training or non-existent training, described above.

125. As a proximate result of COUNTY's conduct and omissions, MANZO suffered injuries and damages as set forth in paragraphs 99-100. The punitive damage allegations of paragraph 101 apply in this Claim for Relief.

Third Cause of Action
(Intentional Infliction of Emotional Distress - Conspiracy between CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOE 1, DOE 2 and DOE 3)

126. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

127. The conduct of Defendants CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOE 1, DOE 2 and DOE 3, as set forth herein, was extreme and outrageous and beyond the

scope of conduct which should be tolerated by citizens in a democratic and civilized society. In order to deliberately injure, intimidate and harass MANZO and other similarly situated prisoners who are disabled or file administrative grievances, Defendants committed the aforementioned extreme and outrageous acts with the intent to inflict severe mental and emotional distress upon MANZO and convey fear and intimidation to MANZO and the other inmates.

128. As a proximate result of Defendants' willful, intentional and malicious conspiratorial conduct, MANZO suffered severe and extreme mental and emotional distress.

129. As a proximate result of Defendants' wrongful conduct, MANZO suffered injuries and damages as set forth in paragraphs 99-100. The punitive damage allegations of paragraph 101 apply in this Claim for Relief to all individually-named Defendants.

130. Since the conduct of Defendants CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOE 1, DOE 2 and DOE 3, and the injuries to MANZO that they inflicted, occurred in the course and scope of their employment, Defendant COUNTY is therefore liable to MANZO pursuant to *respondeat superior*.

Fourth Cause of Action
(California Civil Code § 52.1)
(Against Defendants CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOWD, SHELTON, DOE 1, DOE 2 and DOE 3 and COUNTY)

131. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

132. The conduct of Defendants CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOWD, SHELTON, DOE 1, DOE 2 and DOE 3 as described herein violated California Civil Code § 52.1, in that they interfered with MANZO's exercise and enjoyment of his civil rights,

as enumerated above, through excessive force, as well as the conduct constituting cruel and unusual punishment upon MANZO.

133. As a direct and proximate result of Defendants' violation of Civil Code § 52.1, MANZO suffered violation of his State and Federal constitutional rights, and suffered damages as set forth in paragraphs 99-100. The punitive damage allegations of paragraph 101 apply in this Claim for Relief to all individually-named Defendants.

134. Since the conduct of Defendants CARRASCO, ARTURO ROMERO, OTHER ROMERO, DOWD, SHELTON, DOE 1, DOE 2 and DOE 3 occurred in the course and scope of their employment, Defendant COUNTY is therefore liable to MANZO pursuant to *respondeat superior*.

Fifth Cause of Action
(Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.)
(Against COUNTY)

135. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

136. Plaintiff MANZO is a qualified individual with a disability as defined in the ADA. He has mental and physical impairments that substantially limit one or more major life activities, he has a record of such impairments, and is regarded as having such impairments. 42 U.S.C. § 12102(2); 42 U.S.C. § 12131(2).

137. Defendant is a public entity as defined under 42 U.S.C. § 12131(1)(A).

138. A public entity must “administer services, programs, and activities in the most integrated setting appropriate to” an individual’s needs and is therefore prohibited from unnecessarily segregating or isolating the individual. 28 U.S.C. § 35.130(d).

139. Defendant violated the ADA by failing to ensure that MANZO and others similarly situated had access to, was permitted to participate in, and is not denied the benefits of programs, services, and activities. 42 U.S.C. § 12132; 28 C.F.R. § 35.152(b)(1).

140. Defendant violated the ADA by failing to make "reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability…" 28 C.F.R. § 35.130(b)(7).

141. Defendant violated the ADA by failing to "ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals." 28 C.F.R. § 35.152(b)(2).

142. Plaintiff MANZO did not pose a direct threat to others and housing him in unduly restrictive confinement is not a legitimate safety requirement necessary for the safe operation of services, programs, or activities. 28 C.F.R. § 35.139.

Sixth Cause of Action
(Section 504 of the Rehabilitation Act)
(Against COUNTY)

143. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

144. Plaintiff MANZO is a qualified individual with a disability as defined in Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

145. Defendant receives federal funding within the meaning of the Rehabilitation Act.

146. Defendant violated Section 504 of the Rehabilitation Act by discriminating against MANZO and other similarly situated people with psychiatric and intellectual disabilities solely on the basis of their disabilities. 29 U.S.C. § 794.

147. Defendant violated Section 504 of the Rehabilitation Act by failing to reasonably accommodate MANZO and his disabilities in its facilities, programs, activities and services.

148. Defendant's policy and practice of discriminating against people with disabilities in the use of restrictive housing and denial of mobility assistance such as a cane or footwear is not reasonably related to legitimate penological interests because (1) it worsens their psychiatric and physical conditions; (2) there are no alternative means for them to access programs, services, and activities; (3) there are alternative means to safely and cost-effectively house them in the jails; and (4) it is an exaggerated response as they do not require restrictive housing on the basis of their disabilities.

CLAIM REQUIREMENT

149. MANZO has complied with the requirement that he exhaust his administrative remedies before filing a lawsuit in federal court, pursuant to the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a). MANZO is no longer in custody and files this complaint free of the strictures of PLRA.

150. MANZO is required to comply with an administrative claim requirement under California law in order to make claims based on state law. MANZO has complied with all applicable requirements and submitted a timely Government Tort Claim Notice pursuant to G.C. 910, et seq., which has been rejected either in writing, or by operation of law, by the COUNTY.

PRAYER FOR RELIEF,

WHEREFORE, Plaintiff respectfully request that this Court:

1.) Award Plaintiff general, special and compensatory damages in an amount to be proven at trial.

2.) Award Plaintiff punitive damages against individually named Defendants, and each of them, for their extreme and outrageous conduct in complete disregard for the rights of the Plaintiff;

3.) Award Plaintiff statutory damages and/or attorney's fees against all Defendants as allowed by 42 U.S.C. §1988.

4.) Award Plaintiff statutory damages and/or attorney's fees against all Defendants as allowed by Title I and II of the ADA and Sections 501 and 504 of the Rehabilitation Act.

5.) Grant Plaintiff such other and further relief as the Court deems just and proper.

Dated: March 2, 2017

/S/ Robert R. Powell
ROBERT R. POWELL
Attorney for Plaintiff

JURY DEMAND: Plaintiff demands a trial by jury in this matter, pursuant to FRCP 38(a).

Dated: March 2, 2017

/S/ Robert R. Powell
ROBERT R. POWELL
Attorney for Plaintiff